

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

COGNITIVE SCALE INC.

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§

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Plaintiff,

§ Civil Action No. _____

v.

DELOITTE CONSULTING LLP

§ **JURY DEMANDED**

Defendant.

§

COMPLAINT

Plaintiff Cognitive Scale Inc. brings this complaint against Deloitte Consulting LLP for unfair competition and unjust enrichment.

THE PARTIES

1. Plaintiff Cognitive Scale is a Delaware corporation with a principal place of business at 9500 Arboretum Blvd, L-1, Austin, Texas 78730.
2. Defendant Deloitte Consulting LLP is Delaware limited liability partnership with a principal place of business at 30 Rockefeller Plaza, New York, New York 10112.

JURISDICTION AND VENUE

3. This complaint brings claims under the Lanham Act, as amended, 15 U.S.C. § 1051 *et seq.* The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121(a).

4. The Court has supplemental jurisdiction to hear the state law claims under 28 U.S.C. § 1337(a) because they form part of the same case of controversy.

5. Venue is proper in this District under 28 U.S.C. § 1331(b)(1) because Deloitte Consulting is deemed to reside here under § 1331(c)(2) and (d). Venue is also proper in this District under § 1331(b)(2) because a substantial part of the events giving rise to Cognitive Scale's claims occurred here.

FACTS

Cognitive Scale and its CORTEX Trademarks

6. Cognitive Scale is a software company founded in Austin, Texas by several entrepreneurs and former IBM executives in 2013.

7. Through strategic partnerships with a number of Global 500 companies and other large enterprises, Cognitive Scale quickly became a leader in the field of augmented intelligence software. In addition to its Austin headquarters, Cognitive Scale has offices in New York (NY), London (UK), and Hyderabad (India).

8. Cognitive Scale's flagship product is its award-winning CORTEX augmented intelligence platform. Augmented intelligence is a subset of Artificial Intelligence ("AI") technology that replicates human cognitive abilities like memory, sequencing, perception, anticipation, and problem solving. As explained by Cognitive Scale's co-founder Akshay Sabhikhi, the purpose of augmented intelligence software is to complement the human workforce "so the combination of man and machine can really solve problems."

9. The CORTEX platform harnesses cloud computing and machine learning to analyze data sets from an array of sources, allowing it to “think” (i.e. learn and adapt) as humans do. By continuously analyzing an array of data, the platform can react to changed circumstances in real time and improve business decisionmaking through predictive insights, alternative means for completing regular tasks, self-assuring processes, and other solutions that scale to the client’s enterprise.

10. The CORTEX platform includes a suite of several components, each bearing the name CORTEX, including for example CORTEX FABRIC and CORTEX CERTIFAI (collectively, “the CORTEX Marks”).

11. CORTEX FABRIC automates composition, orchestration, and delivery of insights and solutions generated by the platform’s continuous data analytics. CORTEX FABRIC also provides a centralized visual programming and operating environment through which users can host their own data sets or cognitive process models and access thousands of other building blocks (e.g. enriched industry data sets, models, algorithms, etc.) that reduce the time required to create and deploy augmented intelligence systems tailored to their business needs.

12. CORTEX CERTIFAI, in turn, automatically scans the underlying data and models to learn how to explain predictive insights generated by the platform, uncover hidden algorithmic bias, and probe for weaknesses in the data. Referred to as a trust-as-a-service product, CORTEX CERTIFAI provides unique trust index

scores that help users understand the basis of the platform's insights and compare their cognitive model to industry benchmarks.

13. Cognitive Scale's CORTEX platform is aimed at companies looking to speed up implementation and return-on-investment of enterprise grade AI systems. To fast track the implementation time for clients, Cognitive Scale developed its "10-10-10" method, which creates a secure cognitive cloud within ten hours, customizes the first cognitive system using an organization's data within ten days, and goes live within ten weeks.

14. Cognitive Scale markets the CORTEX platform to companies operating in a number of business sectors, including healthcare, digital commerce, and finance. For example, healthcare providers rely on the platform to provide insight on issues ranging from the optimization of patient care to streamlining payments. Banks and other financial institutions similarly leverage the platform's automated processes to ensure regulatory compliance, assess investment strategy, and guard against risks like money laundering or other fraudulent activities.

15. Cognitive Scale has invested substantially in developing and promoting its CORTEX Marks and the augmented intelligence platform associated with those marks. By 2017—the year Cognitive Scale launched its CORTEX platform—the company had raised over \$50 million funding through partnerships with institutions like Microsoft, Intel, and USAA.

16. Due in part to these efforts, Cognitive Scale's CORTEX platform has become one of the most successful and well-known augmented intelligence platforms

in the world. Cognitive Scale's activities have been profiled in various prominent publications, including Forbes, Bloomberg, and Fast Company.

17. Cognitive Scale has further received numerous awards and accolades for its CORTEX platform. For example, the World Economic Forum in 2018 named Cognitive Scale a *Technology Pioneer*, a title bestowed upon the most innovative and impactful early-stage companies developing new technologies that are poised to have a significant impact on business and society. Prior recipients include other well-known technology companies, such as Google, AirBnB, and Twitter.

18. Cognitive Scale plans to continue investing heavily into promoting and growing its CORTEX Marks and the associated platform.

19. The CORTEX Marks are inherently distinctive. Because of the Marks' distinctiveness and also because of Cognitive Scale's continuous use and promotion, consumers have come to recognize the CORTEX Marks as strongly associated with Cognitive Scale and its goods and services.

20. As a result, Cognitive Scale owns strong common law trademark rights and significant consumer goodwill in its CORTEX Marks.

Deloitte Consulting LLP and its Prior Relationship with Cognitive Scale

21. On information and belief, Deloitte Consulting is a member firm of the UK entity Deloitte Touche Tohmatsu Limited. Deloitte Consulting provides consulting services in a variety of fields, including human capital, finance advisory, tax, management, and technology integration.

22. On March 4, 2015, Cognitive Scale issued a press release announcing an agreement between Cognitive Scale and Deloitte Consulting to deliver services and technology in the healthcare sector through the application of cognitive cloud technology.

23. In forming the relationship, Paul Roma—a Deloitte Consulting principal—acknowledged Cognitive Scale's leadership in the healthcare sector, saying: “Cognitive Scale is the first to take a holistic view of patient care and apply its cloud based cognitive computing platform and healthcare insights to transform the healthcare industry.”

24. As part of the relationship between Cognitive Scale and Deloitte Consulting, Deloitte Consulting began building applications that leveraged Cognitive Scale's cognitive cloud platform for healthcare. The relationship further included development activities, the use of dedicated facilities, collaboration on healthcare cloud-industry standards and models, and training of systems integrators.

25. The individuals from Deloitte Consulting who acted as managing partners for the parties' relationship include several members of Deloitte's Cognitive Advanced Analytics team: Ayan Bhattacharya, Nitin Mittal, Peter Schmidt, and Olaf Tennhardt.

26. When Cognitive Scale launched its CORTEX platform in 2017, these individuals from Deloitte were aware of the CORTEX platform and collaborated in marketing it to potential clients.

27. Also, Cognitive Scale participated in Deloitte's Analytics Summit in Hyderabad, India (where Cognitive Scale has an office) in May 2019, which included a presentation by Cognitive Scale on its CORTEX platform. In addition, between October 2019 and March 2020, Cognitive Scale's Co-Founder/CTO (Matt Sanchez) and UK Sales Lead (Mark Robbins) met with Deloitte's Head of AI Financial Services Authority (Alex Dene), presented Cognitive Scale's CORTEX CERTIFAI software, and offered demonstrations.

28. To date, Cognitive Scale still lists Deloitte Consulting as a partner on its website at www.cognitivescale.com/partners.

Deloitte Consulting's Infringing CortexAI Platform

29. After partnering with Cognitive Scale for years and with full knowledge of Cognitive Scale's CORTEX Marks and platform, on October 13, 2020, Deloitte Consulting without Cognitive Scale's authorization announced the launch of a new, competing cloud-based platform called CortexAI.

30. Deloitte's CortexAI platform is highly similar—if not identical—to Cognitive Scale's CORTEX platform. For example, the CortexAI announcement describes Deloitte Consulting's platform as able “to rapidly develop and deploy scalable, applied AI solutions that drive impact and enable companies to garner fast results and return on investment.”

31. To achieve that goal, the CortexAI platform includes “curated datasets to industry-aligned asset libraries and algorithms to intelligent automation capabilities [that] bring[] the power of AI to help organizations innovate, automate

and generate smart insights.” The platform also includes “a comprehensive set of plug-and-play technologies for data, analytics, intelligent automation and machine learning, which seamlessly integrate to create unique solutions.”

32. Deloitte’s announcement includes a quote from Nitin Mittal—a member of Deloitte’s Cognitive Advanced Analytics team that collaborated with Cognitive Scale as part of the parties’ relationship—which describes the aim of Deloitte’s CortexAI platform in terms strikingly similar to those used by Cognitive Scale’s co-founder: “The CortexAI platform furthers Deloitte’s mission to help our clients apply AI in innovative ways and solve their most complex business problems in . . . *a world where humans work side by side with machines.*”

33. The announcement, though issued less than a month ago, further states that Deloitte’s platform is “already in market and proven in client engagements by Deloitte audit and tax clients.” Thus, Deloitte’s infringement was likely ongoing before the announcement.

Effects of Deloitte Consulting’s Unlawful Activities

34. Deloitte Consulting’s unauthorized use and intended use of CortexAI is likely to confuse consumers. Consumers are likely to perceive some connection or association between the parties’ products as to source, sponsorship, or affiliation, when in fact none exists.

35. Deloitte Consulting’s unauthorized use and intended use of CortexAI falsely designates the origin of Deloitte Consulting goods and services and falsely represents facts with respect to those goods and services.

36. Deloitte Consulting's unauthorized use and intended use of CortexAI enables it to trade off and receive the benefit of the goodwill built by Cognitive Scale in its CORTEX Marks.

37. Deloitte Consulting's unauthorized use and intended use of CortexAI effectively removes Cognitive Scale's ability to control the quality of the goods offered under its CORTEX Marks. This places Cognitive Scale's reputation and goodwill at least partially in the hands of Deloitte Consulting, whose goods and services Cognitive Scale cannot control.

**COUNT I: FEDERAL UNFAIR COMPETITION
(15 U.S.C. § 1125(a))**

38. Cognitive Scale repeats the allegations above as if set forth fully here.

39. Cognitive Scale owns protectable federal rights in the CORTEX Marks. Cognitive Scale has priority over Deloitte Consulting.

40. Deloitte Consulting's unauthorized use and intended use of the CortexAI mark is likely to cause confusion, to cause mistake, or to deceive.

41. Deloitte Consulting has thus infringed Cognitive Scale's federal trademark rights and committed unfair competition in violation of 15 U.S.C. § 1125(a).

**COUNT II: COMMON LAW TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION**

42. Cognitive Scale repeats the allegations above as if set forth fully here.

43. Cognitive Scale owns protectable rights in the CORTEX Marks under Texas common law. Cognitive Scale has priority over Deloitte Consulting.

44. Deloitte Consulting's unauthorized use and intended use of the CortexAI mark is likely to cause confusion, to cause mistake, or to deceive.

45. Deloitte Consulting has thus infringed Cognitive Scale's trademark rights and committed unfair competition under Texas common law.

COUNT III: COMMON LAW UNJUST ENRICHMENT

46. Cognitive Scale repeats the allegations above as if set forth fully here.

47. Deloitte Consulting's actions have unjustly enriched it at the expense of Cognitive Scale.

48. By using the CortexAI mark without Cognitive Scale's authorization, Deloitte Consulting has obtained a benefit to which it is not legally entitled.

49. Deloitte Consulting is thus liable for unjust enrichment under Texas common law.

WILLFULNESS OF DELOITTE CONSULTING VIOLATIONS

50. With respect to each cause of action above, Deloitte Consulting's violations are and have been willful.

51. Deloitte Consulting adopted the CortexAI mark with knowledge of Cognitive Scale's prior rights in a nearly identical mark for identical or highly similar goods and services. Deloitte Consulting had partnered with Cognitive Scale under the parties' 2015 agreement and had direct knowledge of Cognitive Scale's CORTEX Marks and platform.

52. Deloitte Consulting has continued to use and expand the CortexAI mark despite knowing of Cognitive Scale's prior rights.

53. Deloitte Consulting has thus acted in bad faith and with willful disregard for Cognitive Scale's rights.

DAMAGES; INJUNCTIVE RELIEF

54. Cognitive Scale has been and will continue to be harmed by Deloitte Consulting's unlawful actions described above. Cognitive Scale is entitled to money damages.

55. However, money damages cannot fully compensate Cognitive Scale for the irreparable harm it has suffered and continues to suffer.

56. Cognitive Scale is entitled to preliminary and permanent injunctive relief to remedy this ongoing and irreparable harm.

PRAYER FOR RELIEF

Cognitive Scale asks the Court to:

- A. enter judgment for Cognitive Scale on all of its claims;
- B. preliminarily and permanently enjoin Deloitte Consulting—including its owners, officers, managers, shareholders, directors, agents, servants, employees, attorneys, affiliates, related companies, and any persons acting in concert with them or on their behalf—from using, registering, or applying to register the CortexAI mark, any mark incorporating Cognitive Scale's CORTEX mark, or any other mark likely to cause confusion with Cognitive Scale's CORTEX Marks;
- C. order Deloitte Consulting to file with the Court and to serve on Cognitive Scale, within 30 days of entry of the requested injunction, a written report stating in detail and under oath the manner in which Deloitte Consulting has complied with the injunction;
- D. award Cognitive Scale all monetary remedies to which it is entitled under federal and Texas law, including all profits realized by Deloitte Consulting (adjusted upward as the Court deems just), all damages (trebled) sustained by Cognitive Scale, exemplary damages, and nominal damages;

- E. order the seizure and destruction of all items and materials in Deloitte Consulting's possession, custody, or control that use the CortexAI mark, any mark incorporating Cognitive Scale's CORTEX mark, or any other mark likely to cause confusion with Cognitive Scale's CORTEX Marks;
- F. award Cognitive Scale its costs and reasonable attorneys' fees;
- G. award Cognitive Scale prejudgment and postjudgment interest; and
- H. award any other relief the Court deems just and proper.

JURY DEMAND

Cognitive Scale demands a jury trial on all issues triable by jury under Federal Rule of Civil Procedure 38.

Dated: October 26, 2020

Respectfully submitted,

/s/ Louis T. Pirkey

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